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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 866 (WHP)

5 ROGER THOMAS CLARK,

6 Conference

7 Defendant.

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8 New York, N.Y.
9 January 25, 2019
10 12:09 p.m.

11 Before:

12 HON. WILLIAM H. PAULEY III,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

MICHAEL NEFF

18 Assistant United States Attorney

19 STEPHANIE CARVLIN

JACOB MITCHELL

Attorneys for Defendant

20 ALSO PRESENT: SAMAD SHAHRANI, Special Agent FBI
21 GARY ALFORD, Special Agent IRS

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(Case called)

MR. NEFF: Good afternoon, your Honor. Michael Neff, for the government. I'm joined at counsel table by IRS Special Agent Gary Alford and FBI Special Agent Samad Shahrani.

THE COURT: All right. Good afternoon, gentlemen.

MS. CARVLIN: Good afternoon, your Honor. Stephanie Carvlin, for Roger Clark. At counsel table with me is my associate Jacob Mitchell.

THE COURT: All right. Good afternoon to both of you, and I note the presence of Mr. Clark at counsel table.

What's the status of this matter, Mr. Neff?

MR. NEFF: Yes, your Honor. We were last before the Court in September. Since then the government has produced a small amount of supplemental discovery. First, in October we produced to the defense the responsive materials from the Ulbricht laptop. We had previously produced to defense counsel the entirety of that laptop. This was simply isolating the responsive materials. And then, secondly, on Monday of this week, we produced to the defense prison records, including the defendant's phone calls and emails, along with the government's admitted trial exhibits from the trial of Ross Ulbricht before Judge Forrest.

The government's investigation is ongoing. I want to note I learned this week of certain online forum posts that we believe are attributable to the defendant. We are in the

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1 process of gathering those materials and expect to produce them
2 next week, which I informed Ms. Carvlin of before today's
3 conference.

4 I should also note one other significant update since
5 we were last before the Court, which is that in October the
6 government dropped off at the MDC where the defendant is housed
7 presently a laptop as well as, I believe, two 4 terabyte drives
8 with discovery. All of those materials, obviously, were made
9 safe before they were dropped off at the MDC. I believe those
10 are, from our perspective, the primary updates since we were
11 last before your Honor.

12 THE COURT: Ms. Carvlin.

13 MS. CARVLIN: Yes, your Honor. I do have some updates
14 as well. We have been, the defense team has been, going
15 through the material. When we were here last, we were aware
16 that there was going to be somewhere between 8 and 10 terabytes
17 of discovery, and I was obviously aware that was a massive
18 amount of discovery. What's become apparent over the last
19 several months as we've begun to review that material is the
20 method in which it exists, it is images of, according to the
21 government, computer servers. So as opposed to a file that
22 might exist on a normal computer where you would click a folder
23 and then a file and that would pop up, the way that these
24 documents are imagined, you have to make your way all the way
25 down a tree. So you might click ten different times until you

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1 get to one of 10 million documents. Then you have to take that
2 document, extract it, mount it in a program that can view that
3 document.

4 So what's new information since September to us is the
5 extent of the task. I should divide review into two parts.
6 One is the defense review in terms of the attorneys and
7 paralegal, and the other is Mr. Clark's review. Mr. Clark is
8 very involved in his case. He wants to review every bit of
9 material. I want him to review every bit of material. He did
10 get a computer finally because of -- through everybody's best
11 efforts. The government has been very helpful in terms of
12 helping us try to figure out how to view this material and get
13 this material to Mr. Clark, but through everybody's best
14 efforts, Mr. Clark had the first access to the computer server
15 information, I think, about November 15. I think Adam Johnson,
16 the head of the legal department at the MCC, got the computer
17 over to the MDC, then the MDC had to do whatever they had to do
18 through their internal paperwork, and then Mr. Clark has to
19 have permission to go to this separate room. That was working
20 fairly well until the government shutdown.

21 Since the government shutdown, I believe Mr. Clark
22 told me three weeks to today, in order for him to review this,
23 I provided through the government a laptop for him, but that is
24 kept in a separate part of the MDC. It's in a separate
25 building. There has to be an officer dedicated to take

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1 Mr. Clark over to view that. The MDC does not feel that it's
2 able to do that now given whatever their staffing issues are.
3 I don't know, obviously, better than anyone else how long that
4 will continue.

5 All this by way of saying that I am asking the Court
6 for more time. I would like to -- what I would propose is
7 coming back in a couple months, maybe three months. By then --
8 oh, the good part, Judge, I have very good news which I have
9 omitted, which is we have figured out through the Office of
10 Defender Services how to make this material viewable in a more
11 reasonable format. So it would be more akin to looking at
12 documents like you normally would a PDF or a Word doc or
13 something like that. They have provided us with hard drives
14 with these mechanisms on them.

15 Also what will be able to happen now is that searches
16 can be run, word searches, and that will obviously facilitate a
17 targeted or smart view of the material. They have made those
18 available to us with one or two exceptions that we're still
19 working on some technical issues with them about. I have to
20 get that into the MDC, which means going through the government
21 and then going through the MDC. I don't know if that's --
22 typically, it takes a month. I don't know why, but typically
23 stuff -- to make this happen because it's not the normal thing
24 that the MDC does.

25 All this by way of saying I'm going to ask you for

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1 more time. Mr. Clark believes that he will be able to review
2 all the material as it now exists by September, and all of the
3 material. This may be quicker because of this new mechanism.
4 I hope it will be substantially quicker.

5 This case also, Judge, is unique, all cases are
6 unique, but what's different about this case is it's as if this
7 material, according to the government, is a live view of every
8 moment of a multi-year conspiracy. That's essentially what the
9 server can provide. So it's not material that can be ignored.
10 It's not a situation where it's a multi-defendant drug trial
11 and there are pole cameras, but my client is only supposedly on
12 one or two days.

13 As I said, I think it's a unique situation. We are
14 working hard to get through it. I think we're making good
15 progress. I think we've come up with a mechanism that will
16 allow us to review it more quickly. The wild card in all this
17 is, obviously, what will Mr. Clark's ability to view the
18 material be in terms of what the MDC is able and willing to
19 provide?

20 What I would suggest is coming back, and I would ask
21 for three months to come back. Don't set a motion schedule
22 today. Come back in three months. I think three months from
23 now I'll be in a better position to tell you what we have and
24 haven't been able to do. That's sort of where we are.

25 THE COURT: But we have a trial date of September 23.

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1 MS. CARVLIN: We do, Judge, and I would imagine that
2 I'll be asking you to change the trial date. As I said,
3 Mr. Clark very much wants to go through all the material. He
4 has, my understanding -- and I believe him when he says because
5 he's able to discuss it intelligently -- he's been diligent
6 about reviewing when he's able to review. I think we've done
7 what we can to get this material in to him, but it's
8 time-consuming. It requires, as I said, dealing with the MDC
9 in a way they're not comfort or accustomed to doing things, and
10 hopefully now we will be able to speed that process up.

11 But I do think that his review of the material, what
12 he shared with me so far, is vital to my understanding of the
13 material and to his ability to participate in the way that he
14 wants to participate. I'm pretty sure in all the years I've
15 been practicing here I've never asked the judge to change a
16 trial date, but that's the situation I'm in.

17 THE COURT: Well, look, I'm going to put this matter
18 over for about two months, and I'm going to make an adjustment
19 in the trial date now.

20 MS. CARVLIN: Could I ask you, but before you do that,
21 your Honor, Mr. Clark very much has things that he wants the
22 Court to know about why his ability to review the material is
23 vital, things that he's already discovered, and that's not
24 something that we're able to do in front of the government
25 because it would disclose defense strategy. I think before you

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1 set a date, Mr. Clark would like me to submit an *ex parte*
2 letter to your Honor explaining a little more about exactly --
3 that would affect the trial date, essentially.

4 THE COURT: I'll set the matter down for another
5 conference on March 22 at 12 noon, at which point I anticipate
6 fixing a motion schedule in the case and, to the extent
7 necessary, making some adjustment in the trial date, but I'm
8 going to try this case before the end of the year.

9 What can the government do with respect to getting
10 Mr. Clark access to the laptop?

11 MR. NEFF: Your Honor, I spoke with Nicole McFarland,
12 who's counsel at the MDC, I believe head of the legal
13 department there. I spoke with her this week. She confirmed
14 that, as Ms. Carvlin stated, at present, unfortunately, the
15 physical space where the laptop is housed is not presently
16 available due to what I understand to be staffing constraints
17 imposed or connected to the current government shutdown. She
18 assured me that they are aware of the problem; they are working
19 on trying to fix it. I can certainly reach out to her again
20 and make quite clear -- I already did, but I can reiterate that
21 it's coming from the Court that this is very important.
22 Candidly, I'm not certain what else I can do at this point
23 other than reiterate the seriousness of the matter and that
24 it's coming from your Honor. If Ms. Carvlin or the Court has
25 suggestions as to other steps, I'm more than happy to take

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1 them. This is really important. I'm just not sure what else I
2 can do.

3 THE COURT: Ms. Carvlin, do you have any suggestions?

4 MS. CARVLIN: I don't have suggestions in general or
5 in this specific situation about how to get the MDC to do
6 things that they don't want to do, frankly, Judge. I mean, I
7 think the most potent mechanism or force here would be
8 Mr. Neff, I believe, saying that it's exactly what he said he
9 would say, which is that you are insistent that Mr. Clark be
10 given access to this.

11 THE COURT: All right. I'm going to reach out to Adam
12 Johnson myself and speak to him and see what can be done.

13 Am I correct to understand that over the last three
14 weeks, then, the defendant has had no access to the laptop?

15 MS. CARVLIN: That's my understanding from Mr. Clark,
16 your Honor.

17 MR. NEFF: If useful, certainly as of earlier this
18 week, he does not have access. The time period that I was told
19 is slightly shorter, but I think there is no dispute as to the
20 fact that, in light of the shutdown, he does not presently have
21 access and that has been the case for at least ten days and
22 perhaps more like 20.

23 THE COURT: All right. Ms. Carvlin, if you're going
24 to make an *ex parte* submission to me on behalf of your client
25 in connection with the trial date, I suggest you submit

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1 something to me no later than March 19 --

2 MS. CARVLIN: Yes, your Honor.

3 THE COURT: -- so that when we get together on
4 March 22, I'll be fully informed of the defendant's position.

5 MS. CARVLIN: Yes, I will.

6 THE COURT: All right. What's the defendant's view
7 concerning the exclusion of time between now and March 22?

8 MS. CARVLIN: I believe it's appropriate, your Honor,
9 so Mr. Clark can review the discovery that the government has
10 already provided and I can do that as well.

11 THE COURT: Since this continuance is due to ongoing
12 needs to review voluminous discovery in the case, I
13 prospectively exclude the time from today until March 22, 2019,
14 from Speedy Trial Act calculations. I find that this
15 continuance serves to ensure the effective assistance of
16 counsel and prevents any miscarriage of justice. Additionally,
17 I find that the ends of justice served by such a continuance
18 outweigh the best interests of the public and Mr. Clark in a
19 speedy trial pursuant to 18 U.S.C. Section 3161. Certainly
20 note, however, that Mr. Clark has been in custody either here
21 or in Thailand for more than three years, and I'm determined to
22 see that this doesn't go on ad nauseam.

23 MS. CARVLIN: Understood, your Honor.

24 THE COURT: Have a good afternoon.

25 (Adjourned)